



PATENT  
Attorney Docket No. 05725.0983

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	)	
	)	
Jerome PEYRELEVADE	)	Group Art Unit: 2129
	)	
Application No.: 10/024,616	)	Examiner: Michael B. HOLMES
	)	
Filed: December 21, 2001	)	Confirmation No.: 3938
	)	
For: USE OF ARTIFICIAL INTELLIGENCE	)	
IN PROVIDING BEAUTY ADVICE	)	

**Mail Stop AF**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Applicant requests a pre-appeal brief review of the 35 U.S.C. § 102(a) rejection in the Final Office Action mailed September 20, 2007, the period for response having been extended through March 20, 2008 by a petition for extension of time for three months and fee payment filed concurrently herewith. This Request is being filed concurrently with a Notice of Appeal, in accordance with the Official Gazette Notice of July 12, 2005.

In the Final Office Action, the Examiner rejected claims 1-16, 18-51, and 53-91 under 35 U.S.C. § 102(a) as being purportedly anticipated by International Publication No. WO 01/018674 to Maloney et al. ("*Maloney*"). Applicant respectfully traverses the rejection.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131, 8th Ed., Rev. 6 (Sept. 2007), quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." M.P.E.P. § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Applicant submits that *Maloney* does not disclose each and every element of Applicant's claims.

Independent claim 1 recites, among other things, "information about suitability of combining at least some of the plurality of beauty products with other of the plurality of beauty products."

*Maloney* discloses that "[f]eedback information is collected . . . [by asking] questions on how the consumer liked the product, any problems encountered using the product, overall satisfaction for the product, and possible ways to improve the product. . . . For example, . . . whether the shampoo had too much or too little lather, whether the cleaning level was satisfactory, and whether the shampoo delivered the desired effectiveness[.] The feedback data . . . is used . . . to recommend addition[al] customized products . . . and possible alternative products." *Maloney*, p. 12, lines 23-34 (emphasis added).

Therefore, *Maloney* teaches collecting feedback information about the individual effectiveness of an individual product in order to possibly recommend an alternative product. However, *Maloney* does not teach or suggest "information about suitability of combining . . . some . . . products with other . . . products," as recited in claim 1

(emphasis added). *Maloney*'s disclosure of the effectiveness of an individual product cannot constitute a teaching of the claimed "suitability of combining" complementary products with one another.

For example, in an exemplary embodiment consistent with the method recited in claim 1, "information may include . . . product information reflecting complementary nature of two or more products, or the suitability of combining . . . two or more products." Applicant's specification, para. [045] (emphases added and inner quotes omitted). "For example, . . . after a user selects ABC's Ruby Red lipstick, the AI engine may generate a list of recommended products . . . [that] may complement the selected ABC's Ruby Red lipstick" based on the information about the suitability of combining products. *Id.*, para. [047] (emphasis added).

*Maloney* fails to disclose any information about the suitability of combining one product with another product. In *Maloney*, following the shampoo example given on page 12 of *Maloney*, "if the feedback [regarding Shampoo\_X] comprises a . . . negative response from the consumer, . . . possible alternative products [such as Shampoo\_Y] will be recommended to the consumer." *Maloney*, p. 12, lines 30-33 (emphasis added). However, *Maloney* fails to teach or suggest any information about the suitability of combining complementary products, for example, Shampoo\_X with Conditioner\_Z.

For at least these reasons, *Maloney* fails to teach or suggest "information about suitability of combining . . . some . . . products with other . . . products," as recited in claim 1. Since *Maloney* does not teach or suggest each and every feature recited in claim 1, *Maloney* fails to anticipate claim 1.

Independent claims 21, 24, 36, 56, 69, and 70, although different in scope from claim 1, recite features having at least some similarity to those discussed above with respect to claim 1. For example, claim 21 recites “maintaining information about suitability of use of at least some of the plurality of beauty products with other of the plurality of beauty products”; claim 24 recites “identifying . . . at least one recommended product complementary to the at least one user-specified product using at least the information about product relationships”; claim 36 recites “a data structure . . . [that] includes . . . information about suitability of combining at least some of the plurality of beauty products with other of the plurality of beauty products”; claim 56 recites a “location for storing information about suitability of using at least one of the plurality of products with at least one other of the plurality of products”; claim 69 recites “identifying . . . a second recommended product complementary to the first product based on at least the information about relationships”; and claim 70 recites “selecting at least one second beauty product complementary to the first beauty product based on information reflecting a relationship between the first beauty product and the second beauty product.” *Maloney* fails to anticipate claims 21, 24, 36, 56, 69, and 70 for at least reasons similar to those given for claim 1. In addition, dependent claims 1-16, 18-20, 22, 23, 25-35, 37-51, 53-55, 57-68, and 71-91 are allowable over *Maloney* at least by virtue of their dependence from allowable base claim 1, 21, 24, 36, 56, or 70. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 1-16, 18-51, and 53-91 under 35 U.S.C. § 102(a) as being anticipated by *Maloney*.

**Conclusion**

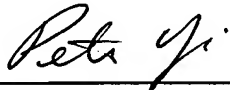
In view of the foregoing, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this request and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: March 18, 2008

By:   
Peter C. Yi  
Reg. No. 61,790  
202.408.4485